

NJDEP's Compliance & Enforcement Transformation

February 18, 2011 External Stakeholder Follow up Meeting (Phase II)

Disclaimer: These are bullet point notes transcribed from handwritten notes. For a full and comprehensive record please refer to the audio recordings of the meeting and power point presentation available through the NJDEP C&E website.

- Knute Jensen presented a summary of C&E transformation efforts since the December 13, 2010 external stakeholder meeting. The meeting objectives were:
 - Clarify our challenge and approach
 - Confirm support for expansion of our role and the results we will seek to deliver
 - Explain our steps and thinking so far
 - Get input on priorities to move ahead
- Knute spent a few minutes summarizing what C&E has heard from stakeholders regarding transformation of the program. How can we change? Can we expand? (Slide 14):
 - more resources aimed at finding and resolving environmental problems directly
 - more resources devoted to collaboration with others both in and beyond the Department
 - saving resources through shifts away from lower risk sites (potential, history, performance, etc.)
 - saving resources by moving away from regulatory minutiae toward greatest environmental concern and benefit
- Knute also presented what C&E is expected to deliver and “authorized” to achieve according to stakeholders’ input (Slide 15):
 - High but meaningful compliance
 - Better behavior from others resulting in better environmental protection or outcomes (whether mandated or not)
 - Finding, clarifying and fixing environmental problems as directly as possible.
- Following the summary, Knute asked the participants did we get these objectives right? How can we expand? And what results are we allowed to deliver?
- Participants in general were very supportive of these guiding principles. One participant indicated that we definitely got it right. Compliance should be the minimum goal. He was pleased that we are looking for environmental excellence and looking to go beyond compliance. He hopes C&E gets the support and resources to pursue it.
- One participant expressed concerns regarding some of the terms used in the guiding principles such as: “lower risk sites” and “regulatory minutiae”. Depending on how

you read environmental problems and how they rank, these terms could be of concern.

- C&E has no interest in stepping away from what's important and we are nowhere near drawing any lines. These are just guiding principles that will be used to develop change.
- There was a comment regarding the chart on A1 -*Saving resources through shifts away from lower risk sites*. It was suggested that it should not be just shifting away from lower risk sites, but also having the flexibility to move away given lower risk issues.
- There were also several suggestions regarding shifting away from enforcement based to performance-based regulation. This would be a drastic change from current state regulations. Give industry an opportunity to solve the problem before it ends up with a major fine. C&E should not be focusing as much on violations, but rather on better performance, getting problems resolved and using less resources.
- Participants in general were supportive of the concept of shifting away from lower risk sites and issues.
- A participant expressed concern that by moving away resources on compliance-shifting away resources from lower risk sites, issues-, the gap would be filled with more enforcement avoiding a compliance assistance approach for even those smaller issues and going straight to an enforcement approach.
- A participant suggested that DEP should evaluate and increase the "acceptance criteria" (cleanup criteria) that drives environmental compliance as a means to saving resources. He suggested DEP take a hard look at acceptance criteria to reduce the number of cases DEP has.
- Regulations in other parts of the world are less voluminous. Switzerland has a strong environmental presence, but their regulations are about 1-inch thick. DEP has too many regulations and it is challenging for facilities to keep up. A more common sense approach should be used. Part of the new C&E model should be to reconnect with businesses in a way to have lower emissions but allow them to make money. Regulations need to be streamlined.
- C&E seems to be going in the right direction although a few concepts are not clear. Going back to the "cop on the beat" concept, a participant felt that what has been lost in the process over the years is the ability for C&E and the rest of the Department to work towards compliance instead of a punitive approach. One of the problems is the segmentation in DEP, that is, someone who works in C&E but does not have the support and tools to work with other groups within DEP. There must be a recognition that the first step in every enforcement program is to reach compliance not to penalize.

- It was noted that C&E's steering group ranked education as the #2 system.
- A participant asked if this type of stakeholder initiatives were happening all over DEP, because C&E should not be alone looking at their program. Every program should be on board with this.
- AC Skacel added that all Assistant Commissioners have been directed to work on the DEP Transformation.
- The next group of slides was presented (#s17-29).
- A participant commented that there should be a DEP-wide strategic management system, because C&E can't move forward if the rest of the Department is not on board.
- The concept of a steering committee should be broader than just within the internal group, as it is in other parts of the Department. A steering committee and setting priorities and communicating issues that go beyond C&E are the reasons why a steering committee should be broader. The priority ranking should not be based solely on the internal steering committee, because then, the process is not transformative.
- A participant added that a "Problem Statement" needs to be defined. Knute Jensen added that he believed a problem statement had been clearly defined and presented at the first stakeholder meeting back in December 2010. Knute suggested that the burning platform is the fundamental "Problem Statement".
- A participant suggested that C&E should frame its objectives by finding out the key problems: is it air toxics, VOCs, ozone? Should these problems be solved through enforcement or regulations? C&E should do a more specific inventory of how time is spent beyond just showing how much time is spent doing inspections. Is C&E inspecting for the sake of inspecting? To what extent is DEP looking at each one of its programs and evaluating its current enforcement program and objectives to see where resources really need to go to make the best improvements to the environment.
- Knute added that a strategic management system will address the concerns addressed including performance measurements.
- It was suggested that maybe there was another way to get to the goal besides enforcement or permitting. Maybe is education or stewardship.
- C&E should identify its objectives by coordinating with other DEP programs.

- Another model includes C&E announcing site inspections and doing meetings with companies regarding what is expected in order to attain compliance. C&E should then perform a follow up audit.
- The concept of using partners to assist C&E was raised.
- A participant suggested that Soil Conservation districts can be a huge resource to C&E. C&E should empower others to help the program do its work. Linkages to partner with others are a new paradigm in enforcement that offers huge opportunities.
- The concept of self inspections was introduced by several participants.
- Does the Massachusetts Environmental Results Program (ERP) program offer any incentives for strong compliance? Has C&E look into it?
- A participant added that working with partners should be a good model, but how do you keep the politics out of it. When we look at these issues from a very high level is easy to loose sight of swimable waters, breathable air. We have to get back to the ground, and C&E should be enforcing more.
- A participant felt strongly that if enforcement is done locally by partners, we will not get consistency and follow up. There is not a “single bucket” approach. There is a need for a range of approaches. We should identify the strengths and weakness of each of these approaches and evaluate all of them.
- A participant offered that we should be careful when having people from other disciplines and without C&E expertise do enforcement work. This approach can create more problems than solutions for the regulated community.
- A participant felt strongly and cautioned against C&E moving too far from the value of deterrence and placing too much reliance on inter-agency MOUs, and beyond the roles of compliance and enforcement. He also had concerns with C&E potentially moving away from regulatory “minutiae”. He added that sometimes the small ticket items actually have more direct impact on the customer than the stakeholder. He wonder if C&E should “wipe the slate clean” first and address the 1000s of outstanding violations, finalize settlements and close cases that need to be closed, and then work on the partnerships in the future.
- A participant added that as a county agency, regulator and regulated entity, it was important to have incentives as well as deterrence. C&E should be very judicious about selecting outside partners. It was recommended that If C&E has to make a choice between moving away from lower priority items to save resources or using outside partners to address the lower priority items, then C&E should use outside partners.

- The presentation resumed (slides 30-36). A listing of the priority systems and projects selected as a result of prioritization ranking are:
 1. Strategic Management System
 - Major undertaking, brand new
 - requires team to devise projects or steps
 2. Series of Seminars – all programs
 - Modeled on existing training
 - To be established soon, offerings ongoing
 3. SEP rule/policy and process

- A participant asked how C&E envisions doing the seminars. Are they with the regulated community to bring them into compliance or is it with communities to explain how the regulatory process works. It was suggested that C&E should reach the general problem with a message they understand, or else we are doing half the job. Knute Jensen added that C&E is currently defining the project scope and that the seminars must aim to accomplish the best possible results.

- SEPs were generally well received. A participant added that SEPs should be flexible and have real “teeth”. He has found the current SEP process difficult in the past.

- The meeting was adjourned at 11:38 a.m.